

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BRIAN BOYKINS,

Petitioner,

v.

KENNETH McKEE,

Respondent.

Case No. 13-12768

Hon. Lawrence P. Zatkoff

ORDER

On September 6, 2013, this Court entered an Opinion and Order holding in abeyance the petition for writ of habeas corpus relief filed by Petitioner so that Petitioner could file a post-conviction motion in the state courts to raise an additional claim that had not been exhausted with the state courts [dkt 8]. In that order, the Court: a) administratively closed the case, b) required Petitioner to file a motion for relief from judgment in state court within sixty days of receipt of the order, and c) required the Petitioner to notify the Court in writing that the motion had been filed in state court.

On January 13, 2014, Petitioner notified the Court that he was never served with the September 6, 2013, Opinion and Order [dkt.10]. As such, Petitioner requested the Court re-issue its Opinion and Order so as to give Petitioner a new sixty day window within which to file a motion for relief from judgment in state court and to notify the Court. On January 22, 2014, the Court granted Petitioner's request, entering an Order giving Petitioner sixty days to file a motion for relief from judgment in state court, and requiring Petitioner to notify the Court in writing when this motion had been filed [dkt. 11].

On March 25, 2014, Petitioner filed a "Motion for Relief from Judgment" [dkt. 13]. Upon

review, the Court finds that Petitioner's actual intent was not to request relief from a judgment of this Court, but to inform the Court that he had filed a motion for relief from judgment in state court within the sixty day window. This is further evidenced by Petitioner's subsequent letter, in which he explains his motion for relief from judgment was "returned unfiled" by the Third Circuit Court for the County of Wayne, as Petitioner has a "matter open in the Michigan Supreme Court concerning this case." Dkt. # 14, p.1.

Accordingly, IT IS HEREBY ORDERED that Petitioner has complied with the Court's January 22, 2014, Order requiring Petitioner to file a motion for relief from judgment in state court within sixty days and to notify the Court.

IT IS FURTHER ORDERED that proceedings in this matter remain STAYED and the case remains administratively CLOSED.

IT IS FURTHER ORDERED that Petitioner must file a motion for relief from judgment in state court within sixty days of the Michigan Supreme Court's ruling on Petitioner's matter pending before it.

IT IS FURTHER ORDERED that Petitioner notify the Court in writing when his motion for relief from judgment has been filed in state court.

IT IS FURTHER ORDERED that Petitioner's habeas petition shall be held in abeyance until further order of the Court.

IT IS SO ORDERED.

Date: October 1, 2014

s/Lawrence P. Zatkoff
HON. LAWRENCE P. ZATKOFF
U.S. DISTRICT JUDGE